The Solicitors' Journal

VOL. LXXXV. **Saturday, August 30, 1941.** No. 35

Editorial, Publishing and Advertisement Offices : 29-31 Breams Buildings, London, E.C.4. Telephone : Holborn 1403.
SUBSCRIPTIONS : Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription : £3, *post free,* payable yearly, half-yearly, or quarterly, in advance. *Single Copy :* 1s. 4d. *post free.*
CONTRIBUTIONS : Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.
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Current Topics.

RECORDERS.

THE office of Recorder, the latest appointment to which is that of Mr. Maurice Healy, K.C., for the borough of Coventry, goes back a long way in our national history. To some it might seem, in view of the functions exercised by a Recorder, that the title he bears is scarcely the most appropriate designation, seeing that his functions are for the most part, if not entirely, judicial. Many such anomalies prevail in our constitutional nomenclature, and in his recent delightful book " On Circuit," Lord Justice MacKinnon draws attention to many of these connected with Recorderships. He points out that Stafford, although the county town, has no Recorder, while Burton-on-Trent, Lichfield and various other boroughs have such an officer and have borough quarter sessions. A number of very small places, such as Tenterden, Thetford, Richmond (Yorkshire), Rye and South Molton have recorders; others again have recorders, but these are described by Lord Justice MacKinnon as " ornamental " officers only, since there are no borough sessions over which they can preside.

PUBLICITY OF LOCAL AUTHORITIES' MEETINGS.

A SOMEWHAT alarming defect in the law relating to meetings of local authorities has been disclosed by a recent correspondence conducted in the columns of *The Times*, and culminating in a leading article on the subject in the issue of that paper of 13th August. The leader writer points out that under the Local Government Act, 1933, local authorities are entitled to make their own standing orders for the regulation of their proceedings, and that this power has been abused in some cases by refusing to allow the more important committees of local authorities to sit in public. The matters with which these committees deal are of wide public interest, and it is therefore a grievance which is felt not only by the editors of local newspapers, but also by the general public, that decisions affecting important public issues are frequently taken behind closed doors. *The Times* leader points out that the critics of this state of the law suspect the growth in local affairs of a spirit of dictatorial bureaucracy, essential to a totalitarian state, but wholly discordant in a land now devoted to and fighting for liberty. The powers of the local authority as agents of the central government have become very wide, and the writer states that local authorities are far too often conducted in effect by a few individuals with the temperament and the leisure to be dictatorial. The line of least resistance is to let them have their own way, but it is a fatal line. In the beginning of Fascism in Italy, the writer states, the local " ras," or party chieftain, was an eager and indispensable agent in the destruction of individual liberty, and Hitler's Gauleiters are on the same model. In a letter in the same issue of *The Times* from the editor of *The Kentish Times*, Mr. R. G. BASSETT, it is suggested that what is wanted is the reintroduction of the Bill promoted in 1930 by the Newspaper Society and the journalistic organisations, and introduced in Parliament in 1930 particularly to amend the Local Authorities' (Admission of the Press to Meetings) Act, 1908. It obtained a second reading, but did not get any further owing to the Government of the day going out of office. One of the important clauses of the Bill provided that " Where a committee of the local authority consists of the whole number of members of the authority a meeting of the committee shall be deemed to be a meeting of the authority." In the light of modern experience any contemplated amendment of local government law in this respect would have to go somewhat further, and amend s. 75 and para. 4 of Pt. V of Sched. III of the Local Government Act, 1933, by virtue of which local authorities may make standing orders for the regulation of their proceedings and business and may vary or revoke any such orders. The need for an amendment of this provision is emphasised in a letter to *The Times* of 19th August, in which the EARL OF ONSLOW stated that he was chairman of the Royal Commission on Local Government and also of the Joint Committee of both Houses which examined the Local Government Bill of 1933, and he did not remember that the point that local authorities would use the power of framing their own standing orders to enable them to hold committee meetings in secret was ever raised. His lordship heartily agreed that the system of government by rases, however benevolent the intention of the rases, was alien to the democratic system of this country, and suggested that the remedy was that committee meetings should normally be open, but that local authorities, like Parliament, should be able to hold secret sessions if necessary. This is clearly not a matter of the provision of gossip for local newspapers, as one correspondent in *The Times* seemed to hold, but one of profound constitutional importance affecting our most precious privileges of individual liberty and freedom of property.

BUREAUCRACY AND THE LAW.

THE danger of the development of the bureaucratic and excessively legalistic type of mind in interpreting and enforcing the ever-growing volume of emergency legislation received strong emphasis in a letter to *The Times* of 14th August from PROFESSOR ERNEST BARKER, who drew particular attention to a previous letter to the same paper from Lord Justice MACKINNON, who had complained that an administrative officer had seized, under a regulation dated 3rd July, a supply of coal ordered in April, but actually delivered on 5th July. In one sense, Professor Barker said, it is hard to criticise the action of administrative officers in interpreting and enforcing administrative regulations. Grant that regulations are drafted, as they tend to be, in terms intended to cover every emergency : grant again that administrative officers are expected to show one hundred per cent. of efficiency, and to enforce regulations so drafted up to the hilt, and the consequences are obvious. They have no discretion, said Professor Barker, and, for want of any discretion, they cannot exercise that part of justice recognised over 2,000 years ago by Aristotle, which consists in giving an " equitable " and sensible answer to meet the difficulties of particular problems and situations. Professor Barker said that it was cowardly to shun the responsibility of using discretion, and if administrative officials had, as he believed they had, one hundred per cent. efficiency, they ought to have efficiency enough to use their discretion equitably. He submitted, therefore, that regulations should not be drafted in strict terms to cover every emergency, and that administrative officers who interpreted regulations should be vested with some latitude of discretion. He quoted in support of his submission the authority of Lord Eustace Percy in his book on " Government in Transition," where he used the following words : " The true charge against the Civil Service is not that Parliament has given it too wide an executive discretion, but that, having received that discretion, the executive has bound itself in the form of regulations by the very definitions that Parliament has refrained from formulating. . . . Of course, their object is to safeguard the citizen against arbitrary action, particularity, or corruption . . . but fool-proof machinery is generally

inferior machinery. We should be much wiser to leave to the official the wide discretion with which Parliament has endowed him, limited only by . . . general principles . . . laid down either by regulation or by Parliament itself. The individual has less to fear from executive discretion than from fixed executive decision." Professor Barker could hardly have chosen a more controversial topic on which to publish his views, which deserve the respect which is due to a statement emanating from so eminent a political theorist. Lawyers whose practices take them into "the bear garden" are familiar with the often unanswerable argument frequently used on appeals from the decisions of masters that a matter was one entirely for the master's discretion. To give wide discretionary powers to administrative officials would probably, it is submitted, increase the helplessness of the individual subject, who in many cases would not be able to have his side of the matter argued, and would not be able to have a review of the decision by way of appeal or *certiorari*. The effect of increasing the power of the bureaucratic official without providing for a stringent check on the abuse of this power would be to undo much of the progress of recent years in the direction of the protection of the rights of the individual in this country. From the point of view of both the individual and the community the rule of law can best be secured by drafting statutes in such a way that as many contingencies as possible are clearly provided for, bearing in mind that hard cases make bad law. It will then be the duty of the administrative official not only to administer the law with one hundred per cent. efficiency, but also with the intelligence and imagination that one is entitled to expect from the officials of the government of a great democracy.

FIRST AID REPAIRS AND STANDARDS OF FITNESS.

In a circular issued on 9th August by the Ministry of Health to housing authorities and county councils in England (Circular 2450), some explanation and amplification are given of some of the more important provisions of the Repair of War Damage Act, 1941, and the Landlord and Tenant (War Damage) (Amendment) Act, 1941, with special reference to standards of first-aid repairs and of fitness under the two Acts. The Repair of War Damage Act, it is pointed out, has retrospective effect from 1st September, 1939, and its main object is to regularise the action taken by local authorities in the speedy execution of first-aid repairs to buildings made unfit for housing purposes by war damage. The proviso to the Housing (Emergency Powers) Act, 1939, s. 1, is now repealed, and a local authority may proceed at once, without formalities, with any urgent repairs to a building used for housing purposes which appear expedient either for avoiding danger to health or for preventing the deterioration of the building. With regard to suggestions that a standard of first-aid repairs might be defined by reference to the minimum or maximum works permissible or to some limit of money value, the circular states that no standard could be devised which would equitably cover all contingencies, and due regard must be paid to the conditions, national and local, operating at the time, including the labour and the materials available. The circular gives the broad outline of the standard, leaving it to local authorities to fill in the picture at their discretion. These outlines deal with tarpaulins and roof felts on roofs and the replacing of tiles, the reinstatement of window sashes and frames, and the boarding up or replacement of windows with due regard for lighting and ventilation, the repair or replacement of external doors, the repair or temporary replacement of loose plaster, the replacement of broken guttering, down-pipes flashings, etc., and the repair of gas, water, electricity and sanitary services. It is added that local authorities should not consider themselves as precluded from doing further repairs beyond those indicated if they are urgently necessary to make houses habitable and are not of an extensive character. At times of continuous and extensive bombing, and particularly in wintry weather, it is desirable that only elementary things should be done first, such as patching up roofs and windows, and that internal work and external repairs should follow later. There is also a welcome statement that as during the past few months arrears of first-aid work have been overtaken in most areas, it will be possible to sanction the execution by local authorities of more permanent work so as to restore as many houses as possible before winter.

CERTIFICATES OF FITNESS.

The circular also deals with the certificate which a local authority may grant stating that a dwelling-house let under a short tenancy is fit, under s. 1 (5) of the Landlord and Tenant (War Damage) Amendment Act, 1941. A "short tenancy" is defined by s. 1 (10) to mean any tenancy or sub-tenancy which the tenant is entitled to determine at any time by a notice expiring not later than the end of the next complete quarter or the next complete period of three months of the tenancy, and if by virtue of the Rent and Mortgage Interest Restrictions Act, 1920 to 1939, the Courts (Emergency Powers) Acts, 1939 to 1941, or the Liabilities (War-Time Adjustment) Act, 1941, a person is holding over land previously held on such a tenancy, he is deemed to be holding the land under a short tenancy. The importance of the local authority's certificate is that it is sufficient evidence that the house is fit as respects the period during which the certificate is in force, unless the contrary is proved (s. 1 (5)). Under s. 1 (1) no rent is payable where land let on a short tenancy is unfit and not occupied in whole or in part by the tenant, and there is no need for any notice of disclaimer. A house is deemed to be fit, for the purposes of the section, if it has been repaired to such an extent as is reasonably practicable at the time when its fitness is in question, having regard to the circumstances prevailing in the locality, and as is sufficient to render the dwelling-house reasonably capable of being used for housing purposes, and if it continues to be in that state of repair. The certificate remains in force unless and until it is revoked under the proviso to subs. (5). This requires the local authority on application by the tenant—which cannot be made at less than three-monthly intervals—to arrange an inspection of the house. If on such inspection they are satisfied that further repairs have become reasonably practicable, or that the previous repairs have been maintained in a reasonably efficient state, they must revoke the certificate and serve a notice of revocation on the landlord. As regards the period between the date of the notice of revocation and the date on which a new certificate is issued, the house is deemed to be "unfit" unless the contrary is proved. The circular states that the function of granting certificates will normally be entrusted to the sanitary inspector, in accordance with subs. (5). It would be impracticable, the circular points out, to lay down any definite standard for the guidance of local authorities in deciding whether to issue or revoke certificates. The standard would depend mainly on the availability of labour and materials and it might vary between different areas and from time to time in the same area. The decision must be taken by comparison with the standard of repairs which, at the time, the local authority have found it practicable to attain throughout their area in the execution of "urgent repairs expedient to avoid danger to health" under the Repair of War Damage Act, 1941.

APPORTIONMENT OF BLAME.

In the June issue of the *Tulane Law Review*, published by the Tulane University of Louisiana, there appears an interesting description of the operation of the proportional damage rule in mutual fault collision cases in the English courts. The article was occasioned by a favourable report of the Senate Committee on Foreign Relations on a proposal that the proportional damage rule should be adopted in the U.S.A. The writer commences by admitting that there seems to be no clear English technique for administering the new rule. Most English cases, he says, under the Maritime Convention Act, 1911, have found one ship wholly to blame or else have divided the damages by halves. With regard to the effect of breach of the anti-collision regulations or International Rules the writer instances *The Kaiser Wilhelm II* (1915), 31 T.L.R. 615, in which both vessels were held equally to blame, "the fault of each vessel being the breach of a regulation so important to be observed in the interests of navigation generally, it is not possible to establish different degrees of fault." Possibly, the writer hazards, all violations of the International Rules should have the same rank, so that the basic technique of apportionment would be a count of the violations chargeable to each vessel. It is possible, he states, that the "number of faults" approach has been applied in some cases in England, but in view of the fact that the English courts usually do not discuss the rationale of the apportionment, it is difficult to make definite statements about this aspect of the matter. England also does not go very far in the direction of establishing a hierarchy of faults within the framework of the International Rules. Though the cases are usually silent on the method of apportionment, when they mention it at all, hints of an apportionment of cause are usual. The nearest approach to an explanation seems to be in the *Clara Camus* (1926), 17 Asp. Mar. Cas. 171, where Lord Shaw's remarks indicated that apportionment of cause was the same as comparison of negligence, i.e., the graver the carelessness, the more "causal significance" it had. There is a drift, the writer continues, towards standardised treatment where one vessel creates a danger which the other, through a fault not too shocking, fails to avert. Expressed as an apportionment of cause, this principle conflicts, he states, with the underlying philosophy of at least some theories of "the last clear chance." The courts still have some difficulty in overcoming "the last clear chance" rule, and the conflict between the two philosophies of cause was indicated in *The Peter Benoit* (1915), 13 Asp. Mar. Cas. 203, where it was said: "The *Aurrera* might have been more to blame at the outset, but *The Peter Benoit* was more to blame at the end." If we may suggest a common law analogy, it is noteworthy that in *Swadling* v. *Cooper* [1932] A.C. 1 the House of Lords approved a direction to the jury to ask themselves which party was chiefly to blame in a case in which the two acts of negligence were so close in time as to make it impossible to discover who had the last chance of avoiding the accident. It is doubtful indeed whether the variety of combinations of circumstances would justify the laying down of general rules of apportionment, and it is significant that the same reluctance on the part of English courts to lay down general rules is discernible in the way in which the apportionment of blame between two or more defendants has been dealt with under the Law Reform (Miscellaneous Provisions) Act, 1935, even though a count of the violations of the Highway Code would in some cases be possible. The significance of the English and American common heritage of law receives timely emphasis in our contemporary's article.

Criminal Law and Practice.

IMMOBILISATION OF MOTOR CARS.

UNSUSPECTED difficulties may lurk behind the most transparent and apparently straightforward language. On 17th July the Divisional Court had to consider the meaning of the Motor Vehicles (Control) Order, 1940 (No. 1,055), which deals in very clear words with the immobilisation of mechanically propelled road vehicles (*Wyles* v. *Banfield*, 57 T.L.R. 642).

The order was made under reg. 19A of the Defence (General) Regulations, which empowers the Secretary of State to make orders providing for mechanically propelled road vehicles to be rendered, when not being driven, incapable of use by unauthorised persons during such hours as may be specified.

Article 1 (1) of the order provides that a mechanically propelled road vehicle shall not be unattended during the hours of daylight unless one or other of certain specified methods of immobilisation are applied. Modified restrictions are applicable during the hours of darkness. The phrase "hours of darkness" is defined in the same way as in s. 1 (4) of the Road Transport Lighting Act, 1927, i.e., as respects the period of summer time, the time between one hour after sunset and one hour before sunrise, and as respects the rest of the year the time between half an hour after sunset and half an hour before sunrise.

Among the necessary exceptions to the provisions in art. 1 (1), art. 1 (3) (*a*) provides that art. 1 does not apply to "a vehicle whilst being used for the purposes of His Majesty's forces or as a police, fire service or civil defence vehicle, or as an ambulance.

In *Wyles* v. *Banfield*, *supra*, the head A.R.P. warden for a Birmingham district had been charged with leaving his car unattended during daylight hours without taking the necessary steps to immobilise it. The respondent owned the car and used it for his private and business purposes. It was registered in his name and he paid the tax on it.

The vehicle was, however, essential to the respondent to enable him to carry out his duties as warden, and the A.R.P. committee insured it, and he was given petrol and granted allowances to use the car in the course of his A.R.P. duties.

The offence was alleged to have been committed at 12.25 p.m., when the respondent was visiting an A.R.P. post in the course of his duties. The stipendiary magistrate dismissed the information on the ground that although at the time when the offence was alleged to have been committed the car was not immobilised, it was nevertheless at that time being used as a civil defence vehicle.

The object of the appeal was to obtain a ruling on the meaning of the phrase "used . . . as a . . . civil defence vehicle," but the Lord Chief Justice deprecated the suggestion that a ruling could possibly be applicable to any other state of facts than those found by the magistrate.

The general rule which the appellant's counsel argued should apply was that a vehicle which could be used at different times for both public and private purposes, at the will of the owner, could not be described as a public service vehicle.

The Lord Chief Justice pointed out that the magistrate's finding that at the material time the vehicle was being used as a civil defence vehicle justified his dismissal of the information. Tucker, J., agreed that the material time for the magistrate to take into consideration was the time when it was said that the car should have been immobilised, and said that regard must be had not to the normal or habitual or general user of the car, but to the purpose for which it was being used at such material time. The appeal was dismissed.

The difficulty in this case arises from the fact that a cursory examination of the order gives the impression that it is important that the vehicle in question should at the material time belong to a category which is described as "civil defence vehicle," and that if a vehicle is also used for private purposes, it cannot belong to that category.

It cannot be suggested that there is no such category, or that the description "civil defence vehicle" is in any way vague. "Civil defence functions" are defined in s. 90 (1) of the Civil Defence Act, 1939, as meaning any functions conferred or imposed by or under the Air-Raid Precautions Act, 1937, or this Act. Therefore clearly a civil defence vehicle is one which is used for civil defence purposes.

The order, however, does not say "normally" or "habitually" or "generally" used as a civil defence vehicle, but makes it clear that the material time for the user is the time of alleged immobilisation. This construction leads to no absurdity, for if one takes the extreme and hypothetical case of a member of a first-aid party taking out his private car on an isolated occasion in order to carry to hospital persons injured during an air raid, it could not be said that the order has anything but a common-sense result if such a person is protected from the criminal sanctions of the order for that single occasion, even if that were the only occasion on which the car was used as an ambulance. One may go even further and say that even in such an extreme case the construction contended for on behalf of the appellant in *Wyles* v. *Banfield*, *supra*, could lead to something very like an injustice. The sole question for the magistrate to decide is, as the Divisional Court emphasised, whether the car, at the material time, was used for any of the exempted purposes, and this is primarily a question of fact.

A Conveyancer's Diary.

WAR DAMAGE: MISCELLANEOUS POINTS.

A CORRESPONDENT has inquired whether the tenant for life of land in strict settlement is liable for contributions payable under the War Damage Act. A tenant for life has, of course, the legal estate in fee simple by reason of the legislation of 1925. If that estate is the only proprietary interest on the first of any January, the tenant for life (or his estate if he dies in the meantime) is liable to pay to the Crown the contribution due the following July: s. 23 (1) (*a*). If at such date there subsist one or more other proprietary interests, the owner of the one which carries with it the right to possession will have to pay the tax to the Crown. Thus if the settled land is in lease for such a term as is a proprietary interest, the lessee will have to pay: s. 23 (1) (*b*); but the tenant for life will be liable partially to indemnify him: s. 24 and Sched. IV. The tenant for life can, however, get back from the capital of the estate the actual net sum that he has to pay. For, under s. 82, "contributions made and indemnities given under Pt. I of this Act . . . shall be treated for all purposes as outgoings of a capital nature." And by s. 48 (1) (*a*): "The purposes authorised for the application of capital moneys by s. 73 of the Settled Land Act, 1925 . . . shall include the discharge of any liability as, or as mortgagee of, a direct or indirect contributor." By s. 75 (1): "Capital money arising under this Act shall, in order to (*sic*) its being invested or applied as aforesaid be paid" (*inter alia*) "to the trustees of the settlement . . . and shall be invested or applied by the trustees . . . accordingly." And s. 75 (2) provides that "the investment or other application by the trustees shall be made according to the direction of the tenant for life." The effect of these various provisions is to enable the tenant for life to direct the S.L.A. trustees to pay, on his behalf, out of capital moneys, any sums for which he is liable under s. 23 of the War Damage Act, 1941. Moreover, s. 48 (1) (*b*) of that Act also provides that contribution shall be an authorised purpose for raising money by mortgage of the settled land. Hence, if there happen to be no capital moneys in hand when this liability has to be met, the tenant for life may mortgage the settled land, under S.L.A., s. 71, for this purpose.

Besides dealing with land in strict settlement, s. 48 of the Act of 1941 also provides in the same manner for land held by trustees for sale and by those bodies who fall within the Universities and College Estates Act, 1925. In these cases, of course, the primary liability falls on the trustees (or body), and not, as in the case of a strict settlement, on the beneficiary.

The passing, in July, of the Trustee (War Damage Insurance) Act, 1941, reveals that a curious position existed for some months concerning the insurance of settled chattels under Pt. II of the War Damage Act. It has long ago been held (see "Underhill on Trusts," 9th ed., p. 297) that a trustee is not *bound* to insure any of the trust property against anything. And apparently his only statutory *power* to insure was that conferred by Trustee Act, 1925, s. 19 (formerly the 1893 Act, s. 18). This power is one to insure "any building or other insurable property" against "loss or damage by *fire*," and is further limited to three-quarters of the value of the property. Moreover, the section directs that the trustee is to meet the premiums out of income. This power is fairly clearly too narrow to enable trustees to insure against war damage (which may easily not be by fire) and in any event does not at all fit in with s. 82 of the Act of 1941, which says that premiums payable under Pt. II (as well as the contributions payable under Pt. I) are to be a capital expense. The difficulty is now overcome by the July Act, under s. 1 of which "A trustee shall have power and shall be deemed at all material times to have had power," unless the instrument creating the trust otherwise provides, (*a*) to insure under Pt. II of the War Damage Act up to the full value of the goods so insured, and (*b*) to pay the premiums out of capital, or out of income until capital can be raised, without obtaining anyone's consent.

I cannot find anything in the War Damage Act, the Trustee (War Damage Insurance) Act, the Business Scheme, the Private Chattels Scheme, or the War Damage to Goods (General) Regulations which says what a trustee of settled chattels is to do with the insurance money if and when received. So apparently the matter is regulated by the general law, i.e., by Trustee Act, 1925, s. 20. That section applies to "money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust or to a settlement within the meaning of the Settled Land Act, 1925, whether by fire *or otherwise*." Such money if receivable under a policy kept up under (*inter alia*) "any power statutory or otherwise" is to "be capital money for the purposes of the trust or settlement." Under subs. 3 (*b*) of the section such money if receivable "in respect of personal chattels settled as heirlooms within the meaning of the Settled Land Act, 1925," is to be applicable in like manner as would have been the proceeds of sale of such chattels"; there are two subclauses about money receivable on insurances of realty, and "in any other case" (which would include that of chattels not settled as heirlooms) the money is applicable, under subs. 3 (*d*), "upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable." Under subs. 4

such money may be applied in "reinstating, replacing or repairing the property lost or damaged," subject to any consents required by the trust instrument for the investment of trust money. The position, therefore, is that the trustees may apply any money received under Pt. II of the War Damage Act, 1941, in repairing or replacing the objects which suffer war damage, subject to any consents required under Trustee Act, s. 20 (4).

I come, finally, to one matter which appears to me to stand in need of attention by the authorities. Under Pt. I of the War Damage Act there are ample arrangements for the Commission to pay for repairs to damaged realty or for temporary works. Under s. 8 (1) (*a*) these payments fall due on the completion of the works or within such time thereafter as is needed to enable the Commission to "ascertain whether they have been duly completed and what was the proper cost thereof." Unlike value payments, which are rightly postponed (presumably to avoid inflation), these payments are to be made at once. There seems to be no parallel provision in regard to chattels. Damage to chattels may occur and be minimised by prompt action on the part of the owner. For example, in a house not wholly destroyed there may well be many valuable chattels which are somewhat burnt and are very wet as the consequence of the firemen's efforts. The owner is in duty bound under cl. 5 of the standard policy under the private chattels scheme to "take due precautions for the safety of the property having regard to the nature thereof, and in particular if at any time any premises occupied by the insured in which there is any property insured sustain war damage, or if any property insured sustains war damage, the insured shall take all reasonable steps to preserve the property insured from damage or further damage as the case may be." Naturally, in the case suggested above, the insured will, as soon as may be, send the chattels to be repaired, and in doing so will save the State the greater ultimate cost that would fall on it if they became total losses through damp or decay. In such an event he ought to be put in funds promptly to enable him to meet the bill, which is, after all, incurred as much for the State's benefit as his own. At present I can find nothing in the enactments to declare expressly that this will be done, though I am told that there are *de facto* arrangements for the Commissioners of Customs and Excise to make allowances, in their discretion, when the total claim has been assessed and agreed, a process which often takes a very long time owing to the heavy pressure of work placed on the District Valuers: (in one case that I know it has taken just eleven months). One possible course would be to let it be known that sums payable under Pt. II of the War Damage Act may freely be assigned to secure payment of actual expenses incurred. Otherwise the repairers will tend only to undertake these works for persons whom they already know as being creditworthy. This seems hardly fair in a democratic society.

Landlord and Tenant Notebook.

LANDLORD AND TENANT (WAR DAMAGE) (AMENDMENT) ACT, 1941.

EXISTING NOTICES AND PROCEEDINGS PENDING.—I.

THE Landlord and Tenant (War Damage) (Amendment) Act, 1941, became law on the 7th August last, but it was not until the afternoon of the 15th that official copies were placed upon the official market, and this accounts for the remissness of the "Notebook" in discussing the new measure. The nineteen sections into which the Act is divided enact new law as well as modifying particular provisions of the 1939 statute, and deal with a considerable variety of matters. Some of the new provisions are of interest to parties who have already taken certain action under the principal Act, and may make it advisable for further action to be taken within three months from the passing of the new Act—the 7th August; and for this reason I propose, though the result may be of untidy appearance, to devote the first article to s. 1 (9), s. 2 (7), and s. 10 (3), which answer to this description.

Section 1 introduces a distinction by creating a new class called "short tenancies," and in effect enacting a special code for parties thereto. A "short tenancy" is defined in subs. (10) as "any tenancy or sub-tenancy which *the tenant* is entitled to determine at any time by a notice expiring not later than the end of the next complete quarter or the next complete period of three months of the tenancy and, in a case where a person is holding over any land, which he *previously held under a short tenancy*, by virtue of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, the Courts (Emergency Powers) Acts, 1939 to 1941, or the Liabilities (War-Time) Adjustment Act, 1941, he shall be deemed to be holding the land under a short tenancy." I will discuss this and all other provisions of the section in a later article; but for the immediate purpose of calling attention to subs. (9) it is necessary only to mention some of the other sub-sections or parts of them.

The section commences, then, by excluding, by subs. (1), short tenancies from s. 4 of the Landlord and Tenant (War Damage) Act, 1939 (the "principal Act") and from its consequential provisions. The s. 4 in question is the important one for parties interested, as landlords or tenants in property rendered *unfit* by reason of war damage, entitling tenants to serve notices of disclaimer or notices of retention and landlords to serve notices of election which, unless complied with within one month (subject to extention or abridgment by the court) put the tenant in the position of one who has served a notice of retention. In the case of war damage which has occurred or may occur after 7th August last, or war damage which occurred before that date but occasioned no notices, this provision and the consequential provisions in Pt. II of the principal Act are, as regards "short tenancies," done away with. Presumably the reason is that many of the tenants concerned are unable to appreciate the law or seek legal advice; but subs. (9), which readers concerned for parties interested should note, provides: "Where, under the principal Act, a notice of disclaimer *has been* served, or a notice of retention has been or is deemed to have been served, before the passing of this Act, in relation to any short tenancy, this section shall not, unless the notice is of no effect, apply to that tenancy." Note that a notice of retention is never "deemed to have been served" until the period mentioned above has actually elapsed: see the 1939 Act, ss. 4 (2)-(4) and 5 (1) (*a*). The "of no effect" refers, presumably, to proceedings under *ib.*, s. 6 (1) and (3).

Another "three months" provision is that contained in s. 2 (7). The section is the first of a number designed to deal with situations brought about by the War Damage Act, 1941. It enables tenants of land rendered unfit by war damage, who may be embarrassed by not knowing whether the War Damage Commission will consider their case one for a "value payment" or a "cost of works" payment, to refrain from committing themselves as regards their landlords: they are empowered by the new provision to serve a notice of retention containing a statement that the notice is conditional and will be treated as a notice of disclaimer if the Commission determine to make a value payment. Such notices are given the description of "conditional notices of retention." Other provisions deal with such matters as modifying the statutory obligation to render fit, etc., and these will again be discussed in a later "Notebook"; but what matters, for practitioners concerned, is s. 2 (7): "Where a notice of retention has been served, or is deemed to have been served, by a tenant before the date of the passing of this Act, he may, within three months after that date, serve a notice on the landlord containing a statement to the like effect as that mentioned in para. (*a*) of subs. (1) of this section, and if, within one month from the service of that notice, he serves a copy thereof upon the War Damage Commission, the notice of retention shall be *deemed to be a conditional notice of retention*."

The remaining new provisions to be noticed to-day, those of s. 10 (3), are a consequence of the assimilation of ground leases to other leases brought about by *ib.*, subs. (1). It will be recalled that s. 13 of the principal Act modified the general provisions of the statute in the case of ground leases (defined, not without difficulty, in s. 24 of the Act: and, as witness to the draughtsman's diffidence, see s. 14, creating special machinery for determining whether a lease did or did not fall within the definition). The modifications provided that leave of court was a condition precedent to the serving of a notice of disclaimer, and the right to serve a notice of retention and the right to serve a notice to elect were taken away. The court was directed to give heed to a number of matters in deciding whether or not to permit disclaimer, but the main consideration was whether it was "equitable." The Legislature has realised that on 7th August last there may have been a number of notices out and a number of applications undecided, under s. 13 and s. 14 of the principal Act, and s. 10 (3) of the new one has been passed to deal with these situations, and is somewhat elaborate. Two paragraphs deal respectively with notices and proceedings, and are followed by two qualifying clauses.

By para. (*a*): "A notice of disclaimer, a notice of retention or a notice to elect served before the passing of this Act in relation to any lease shall not be deemed to be of no effect on the ground that the lease is a ground lease, unless the court has so determined *before* the passing of this Act under s. 14 of the principal Act, or the parties have so agreed (whether expressly or impliedly) *before* the passing of this Act, and in that case the serving of the said notice shall be without prejudice to the serving of a new notice."

It will be noted that the implied agreement concerns a fact, not a promise. What is probably contemplated is conduct evidencing acceptance of the proposition concerned, e.g., A, a lessee, serves a notice of disclaimer without leave on B, the lessor; B points out that he can't do that; and A says, "True, I didn't realise that."

As to proceedings pending: (*b*) "Where proceedings under s. 13 *or s. 14* of the principal Act are pending at the passing of this Act they shall be discontinued upon such terms as the courts think just, and, in the case of proceedings under the said s. 14 relating to a notice of disclaimer or a notice to elect, the court may extend the period allowed under the principal Act within which a notice to avoid disclaimer may be served by the landlord, or, as the case may be, the notice to elect is to be complied with by the tenant, to such date as the court may fix."

It may be mentioned that under s. 5 (4) and (5) of the principal Act, such power already existed, but this no doubt assists those called upon to exercise judicial discretion. The new provision continues:—

"But nothing in this section shall affect any order of the court *made before* the passing of this Act under s. 13 of the principal

Act, and the court shall not exercise its powers under para. (*a*) of subs. (1) of s. 9 of the principal Act;

(i) in a case where notice of disclaimer in respect of a lease which the court is satisfied is a ground lease has been served before the passing of this Act, so as to make the surrender of the lease, or of any sub-lease derived out of the term created by the lease, take effect on a date earlier than the date when the notice was served; or

(ii) in a case where a notice of disclaimer is served after the passing of this Act in respect of such a lease as aforesaid, so as to make the surrender of the lease or of any such sub-lease take effect on a date prior to the passing of this Act."

The explanation of these qualifications is presumably this. Section 9 of the Act of 1939 confers wide powers on the court to modify the operation of notices of disclaimer which, by *ib.* s. 8 (2), effect the surrender of the lease as from the date of the notice, and likewise of derivative sub-leases other than those entitling sub-tenants to actual occupation, if they had not served similar notices; and other derivative interests are extinguished. The object of the qualifications would be, then, to prevent any party from taking advantage of these wide powers in order to reopen, in effect, what the new Act has declared to be a closed book.

Our County Court Letter.

FORFEITURE OF LEASE.

IN *Hearn's Executors* v. *Smith*, recently heard at Newton Abbott County Court, the claim was for the forfeiture of a lease of a house on the ground of arrears of rent, viz., £40. The plaintiffs' case was that the lease had been assigned in January, 1935, to the defendant, who had paid the rent regularly until November, 1939. The defendant's case was that in August, 1939, he had visitors in the house, who paid well for board and lodging. On the outbreak of war, visitors became scarce, and the defendant (who was then over fifty) re-enlisted in the Army. His wife was therefore in receipt of the allowance for herself and one child of 39s. a week. Not wishing to profiteer, the defendants' wife had accommodated five women and three children (soldiers' dependants), who contributed a total of £6 5s., inclusive of board. His Honour Judge Thesiger made an order for forfeiture of the lease, to be suspended so long as £2 per week was paid towards the current rent and arrears.

LIEN FOR REPAIRS TO CAR.

IN *Bassiouri* v. *H. Goodall and Son, Ltd.*, recently heard at Evesham County Court, the claim was for damages for the detention of a motor car. The plaintiff's case was that on the 2nd December, 1940, the defendants' manager had given an estimate for 25s. as the cost of repairs to a motor car. An extra charge of 2s. was suggested for battery charging, and the plaintiff gave instructions for the work to be done for 27s. in all. On the 6th December the plaintiff called for his car, and was given a bill for £3 8s. He offered 30s. in settlement, but this was refused, and the defendants kept the car in default of payment of £2 10s. —their reduced charge. The loss of use of the car had resulted in the following items of damage: wastage on tax, 15s.; wastage on insurance, 22s.; £12 11s. 4d. for railway fares to London; £4 for taxi fares in London and £2 for taxi fares in Evesham. The case for the defendants was that the estimate of 25s. related to repairs to the back panel only. It transpired that the bulb of the rear lamp was broken, and also the wires leading to it. As the plaintiff had required the car to be made good, repairs were effected which occupied 17½ hours. The amount charged was therefore reasonable. His Honour Judge Roope Reeve, K.C., held that a bargain had been made for the work to be done for 27s. inclusive. This amount coincided with estimates obtained by the plaintiff from other garages, and he was entitled to the return of his car on the payment of 27s. The defendants should have delivered up the car, and sued for the balance of their account. Owing to their indiscreet course, the plaintiff had suffered damage to the amount of £22 10s. Judgment was accordingly given in his favour for the amount, less £1 7s. for the cost of repairs, with costs.

GLOUCESTERSHIRE AND WILTSHIRE INCORPORATED LAW SOCIETY.

The annual meeting of this Society was held on 19th July, under the chairmanship of the President, Mr. C. E. Jeens, of Cheltenham.

The annual report and accounts were received and adopted. Mr. Walter Trevelyan Clark, of Malmesbury, was elected President, and Sir Gilbert McIlquham, of Cheltenham, Vice-President, for the ensuing year. The General Committee, Library Committee and Poor Persons Cases Committee were appointed.

Charitable grants amounting to £21 and a donation of £26 5s. to the funds of the Solicitors' Benevolent Association were voted.

The membership of the Society is now 168.

To-day and Yesterday.

LEGAL CALENDAR.

25 August.—At Winchester, on the 25th August, 1685, Chief Justice Jeffreys and four other judges opened the Commission for the trial of the rebels who had taken part in the Duke of Monmouth's rising. Before the round of the Assize towns had been completed, over three hundred persons had been condemned to death and hundreds more to transportation. The ferocity of the proceedings is still looked back to with horror, though the impartial historian must try to put himself back in the atmosphere of alarm created by armed rebellion on English soil. At Winchester itself one of the harshest incidents was the condemnation and execution of Dame Alice Lisle, an aged lady, technically guilty of treason in giving shelter to two fugitive insurgents.

26 August.—On the 26th August, 1667, Lord Chancellor Clarendon, being then very near his fall, had an interview with Charles II and the Duke of York at Whitehall about ten o'clock in the morning. The sum of what the King said was that, by information which could not deceive him, he knew that Parliament had resolved to impeach the Chancellor, and that his innocence would no more secure him than Lord Strafford's had. He added that he was sure that depriving him of the Great Seal would so please the Houses that the royal influence could then preserve him. Clarendon was unwilling to seem to resign willingly, and after two hours Charles left him in displeasure. A few days later he was deprived of office, but the Parliament's animosity was so strong that he had to fly abroad.

27 August.—On the 27th August, 1797, Rebecca Howard was hanged in the castle moat at Norwich for the murder of her illegitimate child. About noon she left the gaol with the chaplain and a Methodist preacher. At the gallows she sang a psalm and addressed the spectators, warning young women to avoid temptation and to be on their guard against deceitful men, who had brought her to an ignominious death. She acknowledged the justice of her sentence, thanked the jailer for his kindness and forgave her enemies. After taking affectionate leave of a young man and woman, she exclaimed: "Lord have mercy on me! God bless you all!" and was launched into eternity.

28 August.—On the 28th August, 1735, "at the Sessions of the Peace at Hicks's Hall, an attorney and an officer were convicted of suing a man in a false action, and were sentenced to six months' imprisonment without bail or mainprise, to pay treble costs and damages and all expenses to the plaintiff, and to remain in gaol till paid. At the same time, one Newman and one Neal were convicted for driving a horse and chaise against a woman on horseback, throwing her down and breaking one of her ribs. Newman, who drove the chaise, was fined £30 and Neal £15."

29 August.—Horace Davey, the second son of Peter Davey of Horton in Buckinghamshire, was born there on the 29th August, 1833. He took his degree at Oxford, and, having been called to the Bar at Lincoln's Inn in 1861, he read in the chambers of John Wickens, afterwards Vice-Chancellor. This was then regarded as the most distinguished school of equity pleading, and Wickens found in Davey a pupil of whose success he felt assured. In 1875 he took silk with much hesitation, but soon acquired such an extraordinary reputation as a case lawyer that his opinions came to be accepted as such by mutual consent of the parties. In 1893 he became a Lord Justice of Appeal, and in the following year he was raised to the House of Lords.

30 August.—Gilbert A'Beckett, metropolitan police magistrate and comic writer, died on the 30th August, 1856.

31 August.—On the 31st August, 1731, John Naden, the servant of Mr. Robert Brough, a farmer of Leek in Staffordshire, was hanged in chains on the highest hill of Gun Heath, within a quarter of a mile of the house of his master, whom he had murdered, waylaying him and cutting his throat as he was returning from market. He confessed that "he was prompted to do it by his mistress, who had enticed him into an unlawful familiarity with her about four years ago, and professed that she should be happy with him if anything happened to her husband, that in the progress of their amour she often used the like expressions and . . . . solicited him to murder Mr. Brough." She was acquitted for lack of evidence.

The Week's Personality.

When Gilbert A'Beckett died of typhus fever at Boulogne-sur-Mer in 1856, Douglas Jerrold wrote of him in "Punch": "We have to deplore the loss of Gilbert Abbott A'Beckett, whose genius has for more than fifteen years been present in these pages, present from the first sheet, 17th July, 1841, till 30th August, 1856. On that day passed from among us a genial, manly spirit, singularly gifted with the subtlest powers of wit and humour, faculties ever exercised by their possessor to the healthiest and most innocent purpose. As a magistrate, Gilbert A'Beckett, by his wise, calm, humane administration of the law, gave a daily rebuke to a too ready belief that the faithful exercise of the highest and gravest social duties is incompatible with the sportiveness of literary genius. On the bench

his firmness, moderation and gentleness won him public respect, as they endeared him to all within their influence. His place knows him not, but his memory is tenderly cherished." He was only forty-five when he died, and he had been a metropolitan police magistrate for seven years. From his call to the Bar at Gray's Inn, of which his father was also a member, he had pursued his profession diligently, and had won wide recognition for his splendid work as a poor law commissioner in his report on the scandal of the Andover Union. He dramatised some of the works of Dickens at the author's request, and wrote fifty or sixty plays. Literature met law in his "Comic Blackstone," illustrated by Cruikshank.

Hidden Things.

Even in these hard times saving is not quite impossible. At the North London Police Court recently there appeared a beggar whose appeal to passers-by—"Spare a penny for a man who is hungry"—was found to have been made against a background of £34 in possession, part in his pocket and part in the savings bank. This fine example of thrift hiding its light under a bushel recalls a story that Mr. Cuff, formerly Registrar of Westminster County Court, used to tell. A debtor told a most convincing tale of poverty. It was a really moving piece of acting and the judge with deep sympathy made a trifling order for a few shillings a month. The man was hardly out of court before he brought out a pocketful of gold which he laughingly showed to his friends and even to the ushers, crowing loudly about how he had outwitted the judge.

New Law for Judges.

Lord Hewart saw it coming but nobody did anything much about his warning, and now the dictatorship of the bureaucrat has come to combine caprice with anonymity to a degree which is startling to those who still believe in freedom and far from reassuring as a contribution to our war effort. In its mysterious keeping the law changes so fast that even the judges of England (not habitually given to outbreaks of lawlessness) can now lose touch with it in their ordinary life. Such, at any rate, was the experience of Lord Justice MacKinnon, who in April sent to a colliery for a truck-load of anthracite French nuts and when it was delivered three months later at his home in Buckinghamshire, was informed that he was breaking some new order made on the 3rd July and that nearly all the consignment must be seized by the fuel controller. As he wrote in a letter to *The Times*, "this is the sort of thing which increases our admiring devotion to Whitehall." The learned Lord Justice has a taste for legal antiquities and may, perhaps, have recalled a phrase about "superannuated jackasses" which a Scots judge once used with a good deal less provocation. He applied it to his judicial brethren who had heard an action which he himself had brought. They decided against him and in disgust he sat no more among them and removed himself to the clerks' table just below. At any rate he knew whom to blame, which is more than one can say when a Government department is concerned. When North, J., on a notable occasion threw into the river a gamekeeper who informed him that he was fishing in forbidden waters, he must have known what he was about and felt that the gesture was worth it. But when law breaking loses the last vestige of *mens rea* and the judges, with the rest of us, are all hardened and unconscious criminals all sorts of things may happen. Perhaps some judge may take a final step on the downward path and throw an official of the Ministry of Mines into the coal-hole.

Obituary.

MR. W. H. TERRY.

Mr. William Henry Terry, barrister-at-law, died on Tuesday, 12th August. He was called by Gray's Inn in 1905.

MR. J. T. DRURY.

Mr. John Thorn Drury, solicitor, and Clerk to the Ramsgate Borough and County Justices, died recently at the age of sixty-three. Mr. Drury was admitted in 1902.

MR. J. C. INGLE.

Mr. John Curzon Ingle, LL.D., solicitor, of Messrs. Hanbury, Whiting and Ingle, of 62, Broad Street, E.C.2, died on Sunday, 17th August, at the age of seventy-seven. Mr. Ingle was admitted in 1890.

MR. R. H. LANDOR.

Mr. Richard Henry Landor, solicitor, of Rugeley, died on Wednesday, 13th August, at the age of eighty-two. Mr. Landor was admitted in 1884.

SIR HERBERT LIDIARD.

Sir Herbert Lidiard, solicitor, of Messrs. Lidiard and Sons, 7, Gt. James Street, Bedford Row, W.C.1, died recently. He was admitted in 1888, and was a former member of the Paddington Borough Council and for ten years represented the Borough on the London County Council.

MR. L. C. MILLER.

Mr. Louis Charles Miller, solicitor, of Messrs. Stevens, Miller and Jones, of Norwich, died on Wednesday, 13th August, at the age of seventy-seven. Mr. Miller was admitted in 1886.

MR. C. R. THOMAS.

Mr. Charles Ruffe Thomas, solicitor, and Clerk to the Maidenhead magistrates for forty-eight years, died on Tuesday, 12th August, at the age of seventy-nine. He was admitted in 1884.

War Legislation.

STATUTORY RULES AND ORDERS, 1941.

E.P. 1192. Acquisition of Securities (No. 4) Order, August 15.
E.P. 1187. **Control of the Cotton Industry** (No. 24) Order, August 9.
E.P. 1197. **Control of Photography** Order (No. 4), August 7.
E.P. 1189. **Consumer Rationing** Order, 1941. General Licence, August 11, in respect of the Supply of Rationed Goods for Theatrical Productions.
E.P. 1195. Consumer Rationing Order, 1941. Licence, August 12, in respect of the Surrender of Coupons.
E.P. 1210. **Defence** (Companies) Regulations, 1940. Order in Council, August 15, adding Regulation 5.
E.P. 1211. Defence (General) Regulations (Isle of Man), 1939. Order in Council, August 15, amending Regulation 51.
E.P. 1161. Defence (General) Regulations, 1939. Order in Council, August 5, adding Regulation 47BA and amending the Third Schedule.
E.P. 1199. Defence (Finance) Regulations, 1939. Order in Council, August 15, adding Regulation 7AA, and amending Regulation 3C.
E.P. 1209. **Emergency Powers** (Channel Islands) Order in Council, August 15.
No. 1201. **Export of Goods** (Control) (No. 27) Order, August 14.
No. 1214. Export of Goods (Control). Order, August 15, revoking certain Licences.
No. 1186. Export of Goods (Control) (No. 26) Order, August 12.
E.P. 1204. **Import Meat** (Marking) Order, August 13.
No. 1196. **Jamaica** Prize Court (Fees) Order in Council, August 5.
E.P. 1205. **Meat** (Maximum Retail Prices) Order, 1940. Amendment Order, August 13.
E.P. 1207. **Milk** (Retail Delivery) Restriction Order, 1940, as amended. General Licence, August 13.
E.P. 1194. **Motor Fuel** Rationing Order, 1941. Direction, August 6.
E.P. 1191. **Securities** (Restrictions and Returns) (No. 2) Order, August 15.
E.P. 1198. **Straw** (Maximum Prices) (Northern Ireland) Order, August 11.

Books Received.

Six English Economists. By T. F. Kinloch, M.A. Third Edition. 1941. Crown 8vo. pp. xvii and (including Bibliography) 98. London: Gee & Co. (Publishers), Ltd. Price 6s. net.

Loose-leaf War Legislation. Edited by John Burke, Barrister-at-Law. 1940-41 volume, Part 13. London: Hamish Hamilton (Law Books), Ltd.

Civil Defence Acts and Orders, 1939-1941. By Leslie Maddock, B.C.L., M.A., of the Inner Temple, Barrister-at-Law. 1941. Medium 8vo. pp. vii and (including Index) 439. London: Eyre and Spottiswoode (Publishers), Ltd. Price 30s. net.

The Law of Stamp Duties on Deeds and Other Instruments. By E. N. Alpe, of the Solicitor's Department, Inland Revenue, Barrister-at-Law. Revised and enlarged by A. L. Goodman of the Inland Revenue, Barrister-at-Law, and Stanley Borrie, solicitor. Twenty-third Edition, 1941. Medium 8vo. pp. xli and (including Index) 421. London: Jordan & Sons, Ltd. Price 25s. net.

Wills in War Time. By R. S. W. Pollard, Solicitor. 1941. pp. (including Index) 48. London and Bognor Regis: John Crowther, Ltd. Price 1s. net.

Slack on The War Damage Act, 1941. A Special Supplement of Forms. Prepared by W. J. Williams, of Lincoln's Inn, Barrister-at-Law. 1941. pp. 24. London: Butterworth & Co. (Publishers), Ltd. Price 3s. net.

The Law of Conveyancing in British India. By S. K. Dutt, Advocate of H.M. High Court of Judicature at Allahabad. 1941. Royal 8vo. pp. x and (including Index) 874. Allahabad: Universal Law House. Price Rs. 12 or £1 6s. net.

Hotel-Keepers—This is the Law. By R. S. W. Pollard, Solicitor, and G. B. Erskine. 1941. Crown 8vo. pp. 203. London and Bognor Regis: John Crowther, Ltd. Price 5s. net.

Woodfalls' Law of Landlord and Tenant. Cumulative Supplement No. 2. By Lionel A. Blundell, LL.M., of Gray's Inn, Barrister-at-Law. pp. viii and (including Index) 107. London: Sweet and Maxwell, Ltd.; Stevens & Sons, Ltd. Price 6s. 6d. net.

Tax Cases. Vol. xxiii., Part VI. 1941. pp. 403-470. London: H.M. Stationery Office. Price 1s. net.

Mr. HUBERT LLEWELYN WILLIAMS, K.C., has been appointed Recorder of Carmarthen, to succeed Mr. D. Rowland Thomas, K.C., who has been appointed a Metropolitan Police magistrate.